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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-000-

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WENDELL LEROY WAITE,

Defendant.

CASE NO: 2:11-cr-00247-JAD-CWH

**GOVERNMENT AND DEFENDANT
WAITE'S STIPULATION AND
RECOMMENDATION FOR COURT-
APPOINTED COMPETENCY
EVALUATOR**

It is hereby stipulated and agreed, by and between Daniel G. Bogden, United States Attorney, through Patrick Burns, Assistant United States Attorney, and Todd Leventhal, Esq., counsel for Defendant WENDELL LEROY WAITE, to request appointment of Dr. Martha B. Mahaffey, Ph.D. as the court-appointed neutral expert to evaluate Defendant WAITE's competency to stand trial in this case.

This Stipulation is entered into for the following reasons:

1. Defendant WAITE has filed motions for a competency evaluation in this case and a companion case, *United States v. Wendell Leroy Waite*, 2:13-cr-00354-JCM-PAL (the companion case). On November 3, 2016, the court in the companion case held a hearing regarding Defendant WAITE's Motion for Competency Evaluation (ECF No. 59). At the hearing, the Government did not oppose the conducting of a competency evaluation based only upon the defense proffer of concerns regarding WAITE's competency. Defendant WAITE filed a similar

1 motion in this case as well.

2 2. The court in the companion case ordered the parties to meet and confer and arrive
3 at a mutually agreed selection of a qualified professional to perform the evaluation.

4 3. Counsel for both the Government and Defendant WAITE were able to confer and
5 agree that they would mutually recommend Dr. Martha Mahaffey, Ph.D., to the Court as the
6 qualified professional to perform Defendant WAITE's competency evaluation. Dr. Mahaffey is a
7 board certified clinical psychologist whose practice includes performing competency evaluations
8 in criminal cases and assessments pursuant to *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242,
9 153 L. Ed. 2d 335 (2002). Dr. Mahaffey is based in Reno, Nevada, but also frequently practices in
10 Las Vegas, Nevada. Dr. Mahaffey is highly qualified to perform the competency evaluation in this
11 case, and her curriculum vitae indicates she has consulted with both prosecutorial and indigent
12 defense entities.

13 4. On November 10, 2016, the court in the companion case entered an order
14 appointing Dr. Mahaffey to conduct the competency evaluation of Defendant WAITE within
15 ninety days from the date of that order, which would be February 8, 2017.

16 5. For purposes of judicial efficiency, economy, and consistency, the parties request
17 that, in resolving the issue of Defendant WAITE's competency to stand trial, this Court also
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Dated this 19th day of December, 2016

DANIEL G. BOGDEN
United States Attorney

By: /s/
PATRICK BURNS
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-000-

UNITED STATES OF AMERICA,

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ORDER

ORDER

Based on the pending Stipulation of counsel, and good cause appearing therefore,

IT IS HEREBY ORDERED that in accordance with Title 18, United States Code, Sections 4241, 4242, 4247, and Rule 12.2(c) of the Federal Rules of Criminal Procedure, Dr. Martha B. Mahaffey, Ph.D., is hereby appointed to conduct a psychological evaluation to determine:

(1) whether defendant WENDELL LEROY WAITE may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceeding against him or to assist properly in his defense.

IT IS FURTHER ORDERED that by February 8, 2017, or such additional period as may be ordered by the Court, Dr. Mahaffey shall prepare, or cause to be prepared, a psychiatric or psychological report to the Clerk of the United States District Court for the District of Nevada, to Patrick Burns, Assistant United States Attorney, and to Todd Leventhal, Esq., counsel for defendant.

1 IT IS FURTHER ORDERED that the said report prepared pursuant to this Order shall
2 include:

- 3 (1) Defendant's history and present symptoms;
- 4 (2) A description of the psychiatric, psychological, or medical tests that were employed
5 and their findings;
- 6 (3) The examiner's findings;
- 7 (4) The examiner's opinions as to diagnosis, prognosis, and whether the defendant is
8 competent to stand trial, the test of which is whether he may presently be suffering from a mental
9 disease or defect rendering him mentally incompetent to the extent that he is unable to understand
10 the nature and consequences of the proceedings against him or to assist properly in his defense.

11 The Court finds that the period of time required by the above-described psychiatric or
12 psychological examination of defendant, and the Court's determination of defendant's competency
13 to stand trial and his sanity at the time of the offense charged is excludable time under the United
14 States Constitution, the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(1)(A),
15 and Rule 5.1 of the Federal Rules of Criminal Procedure.

16 Dated this 20th day of December, 2016

17
18 By:


HON. CARL W. HOFFMAN
UNITED STATES MAGISTRATE JUDGE